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Supreme Court, U.S.
FILED

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No._____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1996

◆

WILLIAM HAWK DANIELS
PETITIONER

VERSUS

ANNETTE LASSALLEE
RESPONDENT

◆

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF LOUISIANA
PETITION FOR WRIT OF CERTIORARI

◆

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Attorney for Petitioner
Counsel of Record

38 pp

QUESTION PRESENTED

Whether the issuance of injunction against petitioner, as a result of picketing on a public sidewalk in front of the governmental building with a sign expressing his personal opinion of respondent, a family court judge was an infringement on his freedom of speech in violation of his First Amendment Right; and whether the garage on B-1 and B-2 of the parking garage of the governmental were not public areas.

JURISDICTION

The judgment of the Louisiana Supreme Court (Appendix A, infra., page 1) was entered on September 20, 1996. The jurisdiction of the Supreme Court is invoked under 28: 1257, the court of last resort has sanctioned departure of lower courts from the accepted and usual judicial proceeding as to call for the exercise of this Court's supervisory power.

STATEMENT OF THE CASE

This case concerns the right of a citizen of Louisiana to engage in freedom of expression without threat of injuction. On August 31, 1992, William Hawk Daniels (hereinafter referred to as "Daniels"), was arrested and imprisoned for four days, for allegedly stalking Judge Annete Lassalle (hereinafter referred to as "Judge Lassalle" or "Lassalle"). Daniels' bond for the misdemeanor was set at $100,000. Newspaper article described Daniels as the first person arrested under the new stalking law, which had only been in effect ten days prior to the allegations against him.

On May 15, 1995, Daniels stood on the public sidewalk in front of the governmental building located at 222 St. Louis Street, Baton Rouge, Louisiana holding a homemade sign which stated :"A M. LASSALLE JUDGE; FALSE Accuser *Stalking*; Cocaine Abuser; Merchant of Chaos; Unmitigated Lying Cocaine Whore!"

On the same day as above, Judge Lassalle sought injuctive relief againt Daniels asking for a Temporary Restraining Order, Preliminary Injunction and Permanent Injunction, to enjoin Daniels from harassing her in any manner; prohibiting Daniels from going near her residence at 956 Bourbon Ave., Baton Rouge, Louisiana; or wherever she resided in East Baton Rouge Parish; prohibiting Daniels from going near her place of employment located at 222 St. Louis Street, Baton Rouge, Louisiana, or interfering in any manner with her employment;

and that Daniels be advised of penalties for violating the temporary restraining order.

Daniels filed an opposition to the petition for preliminary injunction based on the claim that Judge Lassalle had not shown that she would suffer irreparable damage or injury if such relief was not granted or make out a prima facie showing that she would prevail on the merits, and that Daniels the injuction impermissibly infringed on his freedom of speech, by attempting to control the contents of his speech.

On May 15, 1995, the trial judge granted Judge Lassalle a temporary restraining order without bond, and set hearing on her petition for preliminary injunction for May 23, 1995. The temporary restraining order restrained Daniels from:

> Harassing Lassalle in any manner; from going near Lassalle's residence at 956 Bourbon Ave., Baton Rouge, Louisiana, or wherever Lassalle resides in East Baton Rouge Parish; from going near the Governmental Building, 222 St. Louis Street, Baton Rouge, Louisiana, or interfering in any manner with Lassalle's employment. (Temporary Restraining Order, May 15, 1995, Appendix F, infra., page 22)

After the hearing on the petition for preliminary injunction, the trial judge rendered judgment for Judge Lassalle, which was signed June 14, 1995. The court held that the governmental building was a public building, that the sidewalk in front of the building and foyer on each floor to be public areas. (Transcript Appendix E, infra., page 17-21). That the parking garage on B - 1 and B - 2 were not public areas. *Id.* That the hallway in the back of the judges' offices were not public areas. *Id.* The trial judge found that the temporary restraining order, issued May 15, 1995, should be continued in the form of the temporary restraining order. *Id.* page 18.

Further, in recognizing that Daniels has a right to free speech, the court felt that "...the accusations in his sign of 'cocaine abuser,' 'cocaine whore' and those type of statements were beyond the scope of the type of things that Judge Lassalle ought to put up with..." and Daniels was "...prohibited from using those type of comments or those type of words....' *Id.*, pages 18-19.

Due to discrepancies in the original judgment, an amended judgment was signed, August 24, 1995 as follows.

> IT IS ORDERED, ADJUDGED AND DECREED that the petition for preliminary injunction is hereby granted and that defendant William Hawk Daniels, II ("Daniels") is prohibited from harassing Lassalle in any manner whatsoever; prohibited from going near the residence of Lassalle at 956 Bourbon Ave., Baton Rouge, Louisiana; or wherever Lassalle resided in East Baton Rouge Parish; prohibited from interfering in any manner with Lassalle's employment and from harassing Lassalle's staff; prohibited from the ninth floor and the parking garage of the Governmental Building, 222 St. Louis Street, Baton Rouge, Louisiana; and prohibited from suggesting that Lassalle has engaged in criminal conduct and from using profane language to describe Lassalle individually.
>
> Should Daniels be required to go on the ninth floor or in the parking garage of the Governmental, 222 St. Louis Street, Baton Rouge, Louisiana, he must first secure permission from the court via the undersigned judge. (Amended Judgment, August 24, 1995, Appendix D, infra., pages 15-16)

The First Circuit Court of Appeal of Louisiana concluded that the injunction impermissibly prohibited defendant from

going into a public place on the ninth floor of the governmental building; and should not have issued without furnishing security (See Decisions of 1st Circuit Court of Appeals, Appendix B, infra. pages 2-12). However the First Circuit concluded that the enjoinment of threats and harassment in any manner whatsoever toward Lassalle was proper, and that Daniels engaged in unprotected speech *Id.* page 11. From this ruling, petitioner applied to the Supreme Court of Louisiana for writ of certiorari which was denied on September 20, 1996. (See denial of Writ of Certiorari of the Supreme Court of Louisiana, Appendix A., infra., page 1).

REASON FOR GRANTING WRIT

Generally, in order to prevail at a hearing for a preliminary injunction, the moving party must satisfy three prerequisites for such relief, namely, (1) that the injury, loss, or damage he will suffer if injunction is not issued may be irreparable, (2) that he is entitled to the relief sought, and (3) that he will be likely to prevail on the merits of the case. La. C.Civ. Proc. Art. 3610; *General Motors Acceptance Corporation v. Daniels*, 377 So. 2d 346, 348 (La. 1979); *Burnham Broadcasting Company v. Williams*, 629 So. 2d 1335, 1338 (La. App. 4th Cir. 1993); writ denied, 94-0150 (La. 2/25/94)' 632 So. 2d 770, U.S. Cert. Denied, — U.S. —, 115 S. Ct. 69, 130 L. Ed. 2d 25 (1994).

Judge Lassalle's petition for injunctive relief sought to enjoin Daniels from "harassing her in any manner whatsoever; prohibiting Daniels from going near the residence of Lassalle at 956 Bourbon Ave., Baton Rouge, Louisiana or wherever petitioner resides in East Baton Rouge Parish; prohibiting Daniels from going near Lassalle's place of employment located at the Governmental Building, 222 St. Louis Street, Baton Rouge, Louisiana, or interfering in any manner with Lassalle's employment; and that Daniels be advised of the penalties for violating the temporary restraining order. And further prayed for a preliminary injunction and permanent in-

junction prohibiting Daniels as prohibited in the temporary restraining order. (See Lassalle's Petition for Temporary Restraining Order, Preliminary Injunction and Permanent Injunction, hereinafter referred to as "petition" or "Lassalle's petition." Appendix G, infra., pages 24-29).

In his opposition to the request for preliminary injunction relief, Daniels relying on *Coleman, et al v. Caddo Parish Board and Committee on Status of Women*, 25,617 (La. App. 2d Cir. 3/31/94), 635 So. 2d 1238, argued that the injury to Lassalle, if any, is measurable in damages, if the damage or injury she will suffer will be defamation and/or mental stress, as these injuries are measurable in money, therefore does not fit the description of irreparable injury.

Irreparable injury is considered to be loss sustained by an injured party which cannot adequately compensate in money damages or for which such damages cannot be a pecuniary standard. *Anzelmo v. Louisiana Commission of Ethics for Public Employees*, 435 So. 2d 1082 (La. App. 1st Cir. 1983), writ denied, 441 So. 2d 1220 (La. 1983); *Doug Reed Enterprises, Inc., v. City of Baton Rouge*, 591 So. 2d 733 (La. App. 1st. Cir. 1991).

In this case, Lassalle alleged that "Daniels has engaged in a pattern of willful, malicious, and harassing conduct directed at Lassalle, which conduct seriously alarms, annoys and distresses Lassalle," and "that this conduct caused Lassalle to be in fear of bodily injury". Petition, para. 3. Lassalle fails to show that irreparable injury, loss or damage would ensue from the alleged conduct of Daniels, thus entitling her to a preliminary injunction.

In addition, petitioner contends that the public expression of his personal opinion of Judge was protected speech. See, e.g. *Greenburg v. DeSalvo*, 254 La 1019, 229 So. 2d 83 (1969), *Cert. denied, sub nom, Greenburg v. Dunes*, 397 U.S. 1075, 90 S.Ct. 1521, 25 L.Ed. 2d 809 (1970); *Hairford v. Perkins*, 520 So.2d 1053 (La.

App. 3d Cir. 1987). In additon, the preliminary injunction prohibition of pettioner going into the garage of the gavernmental building, absent seeking permission from the trial judge, infringes on petitioner's right to access of a public area.

In this case, the act that precipitated the petition for injunction was Daniels holding the sign in front of the governmental building. However, as justification for the injuction, the petition included alleged act involving third parties which occurred four months prior to the petition being filed, which Lassalle was later "advised of ...." *Id.*, page 25.

Louisiana's jurisprudence is quite clear that the purpose of an injunction is not to afford a remedy for what has happened in the past, but to prevent the occurrence of actions in the future which are unlawful or injurious and pose irreparable harm. *HairFord v. Perkins*, 520 So. 2d 1053 (La. App. 3rd Cir. 1987);

It is not sufficient for the plaintiff to have shown that unlawful acts were committed in the past or they fear these acts will be committed again. *Acadian Heritage Realty v. City of Lafayette*, 451 So. 2d 17 (La. App. 3rd Cir. 1984), writ denied, 452 So. 2d 696 (La. 1984). Daniels has vehemently denied any unlawful acts toward Lassalle, nor has there been any testimony from Lassalle that Daniels made any threats to her.

In this case, the petition sought to restrain alleged past conduct which Lassalle had no personal knowledge but gained through third parties. (See Appendix G, infra., page 25, para. 6). In addition, Lassalle testified that she had seen Daniels socially and had occasions to visit his apartment.

Daniels testified that he never called Lassalle at her job and the last phone call to her home was about 1992. Further, Daniels testified that he never threatened Lassalle, in fact he had always been affectionate toward Lassalle, until he was wrongfully arrested for stalking.

Moreover, Daniels testified that during the period between, 1980 and 1992 he had been in an intimate relationship with Lassalle. Furthermore, Daniels explained that he was upset due to the difficulties encountered in obtaining information after his arrest for stalking and the statements in the arrest report. In addition, Daniels explained that what he hope to accomplished was that "the truth to come out ...".

Clearly, the evidence presented at the trial on the preliminary injunction by Lassalle was insufficient to make out a prima facie showing that respondent would be irreparably harmed if the preliminary injunction had not issued. Moreover, the preliminary injunction infringes upon Daniels freedom of speech with no proof of threat of bodily harm or that the words on the sign were profane.

CONCLUSION

Wherefore, petitioner respectfully pray that a writ of certiorari will be granted.

Respectfully submitted

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APPENDIX A

ANNETTE LASSALLE

VS.

WILLIAM HAWK DANIELS

NO. 96-C - 1463

IN RE: Daniels, William Hawk; - Defendant(s); Applying for Writ of Certiorari and/or Review; Parish of East Baton Rouge 19th Judicial District Court Div. "H" Number 416,877; to the Court of Appeal, First Circuit, Number CA96 0176

September 20, 1996

Denied.

HTL
PFC
JCW
BJJ
JPV
EJB

MARCUS, J. not on panel.

Supreme Court of Louisiana
September 20, 1996

Clerk of Court
For the Court

APPENDIX B

STATE OF LOUISIANA COURT OF APPEAL
FIRST CIRCUIT

NO. 96 CA 0176

DECISION RENDERED: MAY 10, 1996

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ANNETTE LASSALLE

VERSUS

WILLIAM HAWK DANIELS

******

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF EAST BATON ROUGE STATE OF LOUISIANA
TRIAL COURT NO. 416,877

HONORABLE J. MICHAEL McDONALD,
JUDGE PRESIDING

******

Linda Ritzie — **Attorney for Defendant-Appellant**
Baton Rouge, Louisiana

Christine Lipsey — **Attorney for Plaintiff-Appellee**
Baton Rouge, Louisiana

******

BEFORE: WATKINS, CRAIN AND TANNER, JJ.[1]

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[1] Judges Hillary J. Crain and Thomas W. Tanner, retired, are serving as judges *pro tempore* by special appointment of the Louisiana Supreme Court.

TANNER, JUDGE PRO TEMPORE.

William Hawk Daniels appeals a judgment granting petitioner, Judge Annette Lassalle, a preliminary injunction prohibiting Daniels from harassing Lassalle in any manner whatsoever, and from various other particulars detailed below. Mr. Daniels argues that the injunction was wrongfully issued because the prerequisites for that relief had not been satisfied, i.e., a showing that the mover would suffer irreparable injury, loss or damage if the injunction were not issued, and that there is no other available remedy at law. Daniels further contends the injunction is invalid because the statutory bond had not been posted. Although not specifically assigned as error, Daniels argues that the injunction wrongfully infringes on his constitutional rights, particularly, his first amendment right to free speech. We find that the injunction was properly granted; however, it impermissibly prohibits defendant from going to a public place. To the extent that defendant cannot be restrained from the ninth floor of the governmental building, the injunction is amended; otherwise, it is affirmed.

Although Daniels admits his involvement in the actions complained of, he denies that any of those actions were threatening or harassing toward Lassalle. The actions of Daniels, upon which the request for injunction were based, are revealed in the record as follows:

(1) On August 31, 1992, the Baton Rouge Police received calls from two different persons reporting a suspicious man had been standing in front of Lassalle's home, and the same man had been seen riding his motorcycle up and down the road in front of Lassalle's home. When Sgt. Jackson of the East Baton Rouge Police department arrived at Lassalle's home, the man, who was identified by Lassalle as Daniels, had left the premises, and a note he had handwritten to Lassalle was found tucked into the front door of the home. Lassalle re-

ported to the police that this was one of many notes that had been left by Daniels in her mailbox or on her door. She also reported that Daniels had been repeatedly passing in front of her home, despite her requests that he leave her alone. (As a result of this incident, Daniels was subsequently apprehended and arrested for stalking)

(2) Kelly Flanagan, an employee of the District Attorney's office, testified that she received four or five calls at the D.A.'s office from Mr. Daniels during early 1995, demanding access to his criminal files. Ms. Flanagan testified that Daniels was agitated and belligerent, and "downright nasty and rude." She stated that he used profanity when referring to Lassalle as the root of all his problems, and he also stated that "[Lassalle] would be sorry."

(3) Sheila Dykes, an employee with the criminal division of the Clerk of Court's office, testified that in early 1995, Mr. Daniels appeared at the front counter in the clerk's office requesting to see his criminal file. She testified that while she was attempting to help him, he became belligerent, started cursing and using bad language. He mentioned Judge Lassalle and stated that he was "going to kick ass." Afraid that he was becoming violent, Dykes called her administrator and asked for security to escort Mr. Daniels away. Regarding this incident, Charles Ard, with the E.B.R. Sheriff's office, testified that he was called to escort Mr. Daniels away from the clerk's office. Ard testified that Daniels said that Judge Lassalle was a "f_____ joke."

(4) On May 15, 1995, Officer Fontenot, the Baton Rouge City Police officer assigned to the governmental building, noticed a group of people gathering and talking in front of the building. As he approached the gathering, Officer Fontenot noticed a man, later identified as Daniels, standing in front of the building holding a handmade sign which read as follows:

A M. LASSALLE JUDGE
FALSE Accuser *Stalking*
Cocaine Abuser
Merchant of Chaos
Unmitigated Lying
Cocaine Whore!...

Officer Fontenot testified that he had been assigned, earlier, to watch the B-2 level of the parking garage at the governmental building because Daniels allegedly had been stalking and harassing Judge Lassalle. Fontenot recognized the man carrying the sign as Daniels, and escorted him inside the building so Fontenot could check on the existence of a restraining order. Finding none, Fontenot asked Daniels, who was being very uncooperative, to leave the building. As he was leaving, Daniels stated, "that cocaine whore is going to get it yet."

Charlie Ard, the bailiff for Judge Lassalle's courtroom, testified that he had been assigned to escort Judge Lassalle from her car in the garage to her office, as a result of a prior incident during which Daniels allegedly verbally accosted the judge as she exited her car to go to work. Mr. Ard also testified that as he was escorting Daniels out of the building, he heard Daniels remark that "that cocaine whore is going to get it yet."

(5) Later that same afternoon, Julie Ray and Judy Connally, employees at the family court, each answered phone calls made to the family court by Daniels. Ms. Ray, the docket clerk for Judge Graphia, testified that Daniels was inquiring if a restraining order had been filed against him, and asserting that a restraining order was "not going to stop [him]." According to Ray, Daniels stated that the "cockamamie woman judge" had caused him nothing but trouble, and that he would be back tomorrow. Ms. Connally also testified that she answered calls from Daniels on the afternoon of 5/15/95, during which Daniels was demanding and rude, but she hung up the phone on him when he began calling Judge Lassalle a "slut."

Based on the accumulation of the above detailed events, on the afternoon of May 15, 1995, Judge Lassalle filed this action for an injunction. According to Lassalle, she filed the petition because it was becoming increasingly apparent to her that Daniels "intends me serious bodily harm." She testified that over a period of seven years, Daniels, whom she knew socially, began making harassing phone calls to her home. When she got an unlisted telephone number, Daniels began passing in front of her home and leaving notes in her mailbox and on her door. She testified that the incident in the parking garage of the governmental building, during which she was verbally accosted and threatened by Daniels, left her very disturbed and frightened of him.

The trial court found that the prerequisites for an injunction had been shown to exist, stating in part:

> The court is satisfied that the temporary restraining order enjoining, restraining and prohibiting the defendant from harassing Judge Lassalle in any manner, from going near her residence, from interfering with her employment, and the court would enjoin him from even going onto the ninth floor of this building, either of the parking lots in this building. In further recognizing that he has a right of free speech, the court feels that the accusations in his sign of cocaine abuser, cocaine whore, and those types of statements are beyond the scope of the type of things that Judge Lassalle ought to have to put up with, and he is prohibited from using those type comments or those type of words.

The judgment rendered prohibits Daniels from harassing Lassalle in any manner whatsoever; going near her residence; interfering in any manner with her employment; harassing her staff; going on the ninth floor and the parking garage of the governmental building; and suggesting that Lassalle has en-

gaged in criminal conduct and from using profane language to describe Lassalle individually. The judgment also provides that if Daniels should require access to the ninth floor or the parking garage of the governmental building, he must first secure permission from the trial court judge.

A showing that irreparable injury, loss or damage may otherwise result to the applicant must be shown before an injunction may be issued. La. C.C.P. art. 3601. The question of whether the preliminary injunction should be granted or denied is addressed to the sound discretion of the trial court (trier of fact) and the trial court's decision will be disturbed on review only in cases where a clear abuse of its discretion has been shown. **Anzelmo v. Louisiana Commission of Ethics for Public Employees,** 435 So.2d 1082, 1087 (La. App. 1st Cir.), *writ denied*. 441 So.2d 1220 (La. 1983).

Daniels argues the trial court abused its discretion in granting the injunction although Lassalle failed in her burden of proving irreparable injury. First, Daniels asserts that Lassalle's allegations that he "engaged in a pattern of willful, malicious, and harassing conduct directed at [her]" was unsupported by the record. Further, Daniels asserts, Lassalle had an available adequate remedy at law for redress of the alleged torts. Further, according to Daniels, he was merely exercising his constitutional right of free speech by publicly expressing his opinion of Lassalle, and contends that the injunction is an impermissible curtailment of this fundamental right.

First Amendment

As a general rule, the first amendment provides that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. **DeSalvo v. State of Louisiana,** 624 So.2d 897, 899 (La. 1993); *cert. denied*. 114 S.Ct. 1067, 127 L.Ed.2d 386 (1993). Nevertheless, the rights of free speech and assembly, while fundamental in our democ-

ratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place or at any time. **State v. Enclade,** 505 So.2d 87 (La. App. 4th Cir.); *writ denied*. 508 So.2d 63 (1987), *citing*, **Cox v. Louisiana,** 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965).

As speech strays further from the values of persuasion, dialogue and free exchange of ideas the first amendment was designed to protect, and *moves toward threats made with specific intent to perform illegal acts*, the state has greater latitude to effectively neutralize verbal expression. **Shackelford v. Shirley,** 948 F.2d 935, 938 (5th Cir. 1991), (emphasis added). Furthermore, as explained by Professor Tribe:

> The notion that some expression may be regulated consistent with the first amendment ... starts with the already familiar proposition that expression has special value only in the context of "dialogue": communication in which the participants seek to persuade, or are persuaded; communication which is about changing or maintaining beliefs, or taking or refusing to take action on the basis of one's beliefs ... *It is not plausible to uphold the right to use words as projectiles where no exchange of views is involved.*

L. Tribe, *American Constitutional Law*, §12-8 at 836-37 (2d Ed. 1988) (emphasis added).

In **Shackelford v. Shirley,** supra, 948 F.2d 935, the fifth circuit was faced with defendant's argument that his conviction for violating Mississippi's telephone harassment statute constituted an impermissible curtailment of his first amendment rights. In that matter, the defendant admitted he called his former supervisor and told him the next time he came by the defendant's car lot he would be "toting an ass whipping." The court rejected the defendant's claim, holding:

In our view, as expansive as the first amendment's con-

> ception of social and political discourse may be, *threats made with specific intent to injure and focused on a particular individual easily fall into that category of speech deserving of no first amendment protection.*

Shackelford, supra, 948 F.2d at 938, (emphasis added). We agree with the court's conclusion and find it applicable to the matter before us.

Daniels contends that the public expression of merely his personal opinion of Judge Lassalle is protected speech. We do not deny that a person has the right of freedom of expression, and we are aware of the jurisprudence supporting this right. **See, e.g., Greenburg v. DeSalvo,** 254 La. 1019, 229 So.2d 83 (1969), *cert. denied. sub nom.* **Greenburg v. Dunkes,** 397 U.S. 1075, 90 S.Ct. 1521, 25 L.Ed.2d 809 (1970); **Hairford v. Perkins,** 520 So.2d 1053 (La. App. 3rd Cir. 1987); **Galle v. Coile,** 556 So.2d 957 (La. App. 3rd Cir. 1990). However, as did the defendant's threat in **Shackelford,** Daniels "mere" expression of his opinion of Judge Lassalle went far beyond the realm of protected speech.

Daniels' expression of opinion of Judge Lassalle was not simply an affront to her dignity and integrity, which, albeit poor taste, is protected speech. Daniels' "speech" included words of anger and profanity and included threats of varying degrees, i.e., she "is going to get it yet"; she "will be sorry"; that he would "be back tomorrow" and assertions to the effect that a restraining order was not going to stop him and that he was not afraid of the law or of going to jail. Judge Lassalle testified that she was extremely disturbed by and frightened of the defendant, and that his persistent actions despite her repeated requests that he leave her alone left her in fear that he would inflict great bodily harm to her. Further, the record contains testimony of several witnesses who witnessed Daniels' behavior, and were frightened of him and considered him to be potentially violent. Indeed, Ms. Dykes saw fit to call in ex-

tra security to the clerk's office when Daniels became belligerent and uncooperative. Some witnesses found Daniels' actions and language so offensive as to warrant hanging up on him, even though the calls were received by them at their place of employment. Given these actions, and the circumstances surrounding them, we find that Daniels' speech was delivered with the specific intent to injure and was focused and directed on one particular individual; a type of spch which is not constitutionally protected.

Preliminary Injunction

Daniels also argues that the trial court abused its discretion in granting the injunction without a showing of irreparable injury, loss or damage. He contends that Lassalle's allegations of harassment and threats, even if proven to be true, constitute torts, the redress for which there exists an adequate remedy at law.

Courts are generally reluctant to issue an injunction to restrain torts such as defamation or harassment. **Greenburg v. DeSalvo,** supra, 229 So.2d at 86. An injunction is a harsh, drastic and extraordinary remedy and is only issued where the petitioner is threatened with irreparable loss or injury without adequate remedy at law. Irreparable injury is that which can not be adequately compensated in damages, or for which damages can not be compensable in money. **Greenburg v. DeSalvo,** supra, 229 So.2d at 86.

As stated above, if Daniels' expression of opinion of Judge Lassalle had been merely unfavorable, however distasteful, negative or injurious to her reputation and integrity, we would be constrained by law to reverse the injunction, because there would be an adequate remedy at law, i.e., a civil action in tort for damages. Indeed, even if Daniels' words were defamatory, an injunction would not be a proper remedy. However, this matter is far more serious than the expression of allegedly

defamatory and insulting speech. As detailed above, there were some very real and imminent threats made toward the person of Lassalle, in the presence of people who were also disturbed and frightened by those threats. We find that petitioner's fear of bodily harm and continued threats are justified based on the evidence in the record, and constitute a showing of irreparable injury. Therefore, the trial court did not abuse its discretion in granting the preliminary injunction.

In granting the injunction, the trial court was mindful and cautious about a potential infringement on defendant's constitutional rights, given that the governmental building where Judge Lassalle is employed is a public building, and the sidewalk in front thereof, is likewise a public area. Accordingly, the trial court tailored the injunction to prohibit defendant only from the ninth floor of the building, the floor on which Judge Lassalle's office and staff are located. The ninth floor is a public area and we find the injunction impermissibly enjoins Daniels from going on the ninth floor. To that extent, the injunction is amended; however, the enjoinment of threats and harassment in any manner whatsoever toward Lassalle remains in effect in all places, including the ninth floor of the governmental building.

We do find some merit to Daniels' argument that the injunction should not have issued without the furnishing of security, as required by La. C.C.P. 3610. When an injunction has been granted without security, an appellate court may either set aside the preliminary injunction or remand the matter to the trial court for the fixing of security. **Hernandez v. Star Master Shipping Corp.**, 94-1553 (La. App. 1st Cir. 4/7/95), 653 So.2d 1318. We do not believe it would serve any useful purpose in this matter to set aside the injunction due to the lack of security. The interests of justice and judicial economy would be best served by remanding this matter to the trial court for the furnishing of security.

For all of the above reasons, the preliminary injunction is amended to allow defendant access to the ninth floor of the governmental building, as long as such access does not violate the prohibition against threats and harassment; in all other respects, the injunction is affirmed. This matter is hereby remanded to the trial court, which is ordered to fix the amount of security to be furnished by petitioner. Costs of this appeal are assessed to defendant.

AMENDED; AFFIRMED AS AMENDED. REMANDED WITH ORDER

APPENDIX C

ANNETTE LASSALLE NO. DIV.
19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

WILLIAM HAWK DANIELS

STATE OF LOUISIANA

ORDER

Upon considering the verified petition filed in this matter and it appearing that immediate and irreparable injury, loss or damage will result to plaintiff if William Hawk Daniels, II is not restrained from harassing Annette Lassalle ("Lassalle") in any manner whatsoever; is not prohibited from going near the residence of Lassalle at 956 Bourbon Ave., Baton Rouge, Louisiana or wherever petitioner resides in East Baton Rouge Parish; is not prohibited from going near Lassalle's place of employment located at the Governmental Building, 222 St. Louis Street, Baton Rouge, Louisiana, or interfering in any manner with Lassalle's employment;

IT IS ORDERED, ADJUDGED AND DECREED that a temporary restraining order be issued herein without bond directed to William Hawk Daniels, II, restraining, enjoining and prohibiting him from harassing Lassalle in any manner; from going near Lassalle's residence at 956 Bourbon Ave., Baton Rouge, Louisiana, or wherever Lassalle resides in East Baton Rouge Parish; from going near Lassalle's place of employment located at the Governmental Building, 222 St. Louis Street, Baton Rouge, Louisiana, or interfering in any manner with Lassalle's employment.

This temporary restraining order expires at the end of ten (10) days from the date the order is signed unless extended by this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that William Hawk Daniels, II show cause on the 23rd day of May, 1995 at 3:00 o'clock p.m. why a preliminary injunction in the form of the temporary restraining order should not issue, to be effective during the pendency of this proceeding'.

APPENDIX D

ANNETTE LASSALLE NO. 416,877 DIV. H
19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

WILLIAM HAWK DANIELS

STATE OF LOUISIANA

AMENDED JUDGMENT

The petition for preliminary injunction filed by Annette Lassalle ("Lassalle") came on for hearing on May 23, 1995, pursuant to regular assignment and after notice. Attorneys for all parties were present in Court:

The Court, after considering the law, evidence and testimony presented, and for reasons previously assigned in Open Court on May 23, 1995;

IT IS ORDERED, ADJUDGED AND DECREED that the petition for preliminary injunction is hereby granted and that defendant William Hawk Daniels, II ("Daniels") is prohibited from harassing', Lassalle in any manner whatsoever; prohibited from going near the residence of Lassalle at 956 Bourbon Avenue, Baton Rouge, Louisiana, or wherever Lassalle resides in East Baton Rouge Parish; prohibited from interfering in any manner with Lassalle's employment and from harassing Lassalle's staff; prohibited from the ninth floor and the parking garage of the Governmental Building, 222 St. Louis Street, Baton Rouge, Louisiana; and prohibited from suggesting that Lassalle has engaged in criminal conduct and from using profane language to describe Lassalle individually.

Should Daniels be required to go on the ninth floor or in the parking garage of the Governmental Building, 222 St. Louis Street, Baton Rouge, Louisiana, he must first secure permission from the Court *via* the undersigned judge.

Judgment rendered on the 23rd day of May, 1995.

Judgment read and signed in _____, Baton Rouge. Louisiana, this _____ day of_____, 1995.

JUDGE, 19TH JUDICIAL DISTRICT COURT

Respectfully submitted:
BREAZEALE, SACHSE & WILSON, L.L.P.
One American Place, 23rd Floor
P.O. Box 3197
Baton Rouge, Louisiana 70821
(504) 387-4000

BY: s/ Christine Lipsey
Louisiana Bar Roll No. 1182
Attorneys for Annette Lassalle

CERTIFICATE OF SERVICE

I certify that a copy of the above and foregoing amended judgment has been sent this date, *via* hand delivery and *via* United States Mail, postage prepaid and properly addressed, to: Ms. Linda Ritzie, Attorney at Law, 921 North Lobdell Avenue, Suite F, Baton Rouge, Louisiana 70806 on the 2nd day of August, 1995.

s/ Christine Lipsey

APPENDIX E

NINETEENTH JUDICIAL DISTRICT COURT PARISH OF EAST BATON ROUGE STATE OF LOUISIANA CIVIL DIVISION H

ANNETTE LASSALLE
VS. NO. 416,877
WILLIAM H. DANIELS

PETITION FOR A PRELIMINARY INJUNCTION
TUESDAY, MAY 23, 1995
BEFORE THE
THE HONORABLE J. MICHAEL MCDONALD,
JUDGE PRESIDING

APPEARANCES:
CHRISTINE LIPSEY : FOR THE PLAINTIFF
LINDA RITZIE : FOR THE DEFENDANT

REPORTED BY:
CARMEL M. BURNS, CCR
OFFICIAL COURT REPORTER

AROUND HER. THIS POOR ME AND THESE CRY-BABY TEARS IS A RIOT.

I HAVE SEEN HER DO —

THE COURT: ALL RIGHT. I'M JUST ASKING WHAT YOU WANT.

A. I'VE SEEN HER PULL THIS FOR YEARS, MAN.

THE COURT: MS. LIPSEY, ANY QUESTIONS?

MS. LIPSEY: NO QUESTIONS, YOUR HONOR.

THE COURT: ANYTHING ELSE?

MS. RITZIE: NO, YOUR HONOR.

THE COURT: THANK YOU, SIR.

A. THANK YOU.

****WITNESS EXCUSED****

MS. RITZIE: NO FURTHER WITNESSES. WE REST.

THE COURT: ANY REBUTTAL?

MS. LIPSEY: NO REBUTTAL, YOUR HONOR.

THE COURT: ANY ARGUMENT?

REPORTER'S NOTE: ARGUMENT WAS HAD BY COUNSEL.

THE COURT: ALL RIGHT. WELL, THERE ARE A COUPLE OF MATTERS HERE THAT WE ALL NEED TO UNDERSTAND. THIS BUILDING IS A PUBLIC BUILDING. THE SIDEWALK IN FRONT OF THIS BUILDING AND THE AREA BEHIND THE BUILDING ARE PUBLIC AREAS. THE FOYER ON EACH FLOOR IS A PUBLIC AREA. THE TENTH FLOOR COFFEE SHOP, I SUPPOSE, COULD BE CONSTRUED AS A PUBLIC AREA. IT IS THERE FOR THE BENEFIT OF THE EMPLOYEES OF THIS BUILDING AND THE PUBLIC WHO FINDS ITSELF HERE FOR WHATEVER REASON TO UTILIZE THAT — THAT COFFEE SHOP AND — AND THAT SORT OF THING. THE PARKING GARAGE ON B-1 AND B-2 ARE NOT PUBLIC AREAS. THEY ARE FOR THE UTILIZATION OF THE PERSONNEL WHO ARE ASSIGNED

TO WORK IN THIS BUILDING. ACCESS IS LIMITED TO THE PARKING GARAGE ON B-1 AND B-2. YOU HAVE TO HAVE A CARD IN WHICH TO GAIN ACCESS INTO THOSE AREAS. THOSE ARE NOT BY ANY STRETCH OF THE IMAGINATION PUBLIC AREAS. WHILE THE BUILDING MAY BE A PUBLIC BUILDING, THE HALLWAY IN THE BACK, MY OFFICE IS FOR THE USE OF ME AND MY STAFF. MY OFFICE, AS LONG AS I AM USING THAT OFFICE, IS ASSIGNED TO ME AND IS NO LONGER A PUBLIC AREA. MY OFFICE IS MY OFFICE. JUDGE LASSALLE'S OFFICE IS HER OFFICE, AND THE ONLY PEOPLE WHO ARE ALLOWED, IF YOU WANT TO USE THAT TERM, IN THOSE OFFICES ARE THOSE WHOM I CHOOSE TO INVITE INTO THAT OFFICE, JUST LIKE YOUR OFFICE AND YOUR BUILDING IS A PUBLIC BUILDING BUT — AND I DON'T KNOW WHERE MS. RITZIE'S OFFICE IS, BUT HER OFFICE IS HER OFFICE. SHE PAYS RENT AND THERE MAY BE PUBLIC AREAS, BUT I DON'T HAVE A RIGHT TO GO INTO HER OFFICE NOR DO I HAVE A RIGHT TO GO INTO YOUR OFFICE, NOR DO I HAVE A RIGHT TO GO INTO JUDGE LASSALLE'S OFFICE UNLESS I AM INVITED. THE COURT IS SATISFIED THAT THE TEMPORARY RESTRAINING ORDER ISSUED BACK ON MAY 15 SHOULD BE CONTINUED IN THE FORM OF A TEMPORARY RESTRAINING ORDER ENJOINING, RESTRAINING AND PROHIBITING THE DEFENDANT FROM HARASSING JUDGE LASSALLE IN ANY MANNER, FROM GOING NEAR HER RESIDENCE, FROM INTERFERING WITH HER EMPLOYMENT, AND THE COURT WOULD ENJOIN HIM FROM EVEN GOING ONTO THE NINTH FLOOR OF THIS BUILDING, EITHER OF THE PARRING LOTS IN THIS BUILDING. IN FURTHER RECOGNIZING THAT HE HAS A RIGHT OF FREE SPEECH, THE COURT FEELS THAT THE ACCUSATIONS IN HIS SIGN OF COCAINE ABUSER, COCAINE WHORE, AND THOSE TYPE STATEMENTS ARE

BEYOND THE SCOPE OF THE TYPE OF THINGS THAT JUDGE LASSALLE OUGHT TO HAVE TO PUT UP WITH, AND HE IS PROHIBITED FROM USING THOSE TYPE COMMENTS OR THOSE TYPE OF WORDS. MS. RITZIE, IN YOUR MEMORANDUM YOU POINT OUT CERTAIN CONDUCT AND FREE SPEECH AND PARTICULARLY TOWARD PUBLIC OFFICIALS AND ONE OF THE CASES YOU CITED, AND I DON'T REMEMBER WHICH ONE, TALKS ABOUT THE FACT THAT SOMEONE DOES NOT HAVE A RIGHT TO — OR SOMEONE HAS A RIGHT TO CRITICIZE A JUDGE, AND I DON'T MEAN TO IMPEDE OR RESTRAIN MR. DANIELS' RIGHT TO CRITICIZE THE JUDGE, BUT IT CAN'T BE IN ORDER TO TRY TO INFLUENCE HER ON ANY PENDING CASES AND, IF HE WANTS TO MAKE COMMENTS THAT SHE MAKES AWFUL RULINGS, THAT SHE IS A MERCHANT OF CHAOS, I WOULD SUBMIT THAT EVERYTHING THAT GOES ON THE NINTH FLOOR IS CHAOTIC. THAT'S PROBABLY TRUE. THERE IS CHAOS WHEN THEY GET TE CASES AND THERE IS CHAOS USUALLY WHEN THEY DECIDE THE CASES. YOU KNOW, JUST THE NATURE OF THE BEAST IS CHAOS, A FALSE ACCUSER. SHE'S A LIAR, THOSE KINDS OF THINGS. I DON'T CONDONE IT, BUT HE PROBABLY HAS A RIGHT TO DO IT, BUT THESE THINGS CALLING HER THINGS LIKE A WHORE, A BITCH, ALLEGATIONS OF CRIMINAL ACTIONS, THE COURT IS NOT GOING TO ALLOW THAT. I DON'T HOW YOU FASHION THAT INTO THE FORM OF AN ORDER BUT —

MS. RITZIE: YOUR HONOR, IF I MAY, AS IT RELATES THE NINTH FLOOR, THERE ARE OTHER COURTROOMS ON THE NINTH FLOOR. ARE WE GOING TO RESTRICT IT JUST TO JUDGE LASSALLE'S COURTROOM OR THE NINTH FLOOR?

THE COURT: IF HE NEEDS TO GO ON THE NINTH FLOOR FOR ANY REASON, HE CAN GET IN TOUCH WITH ME AND I WILL GIVE HIM PERMISSION. IF HIS EMPLOYMENT CARRIES HIM TO THE B-1 OR B-2 LEVEL OF THIS BUILDING, IF HE HAS PERMISSION FROM ME TO GO THERE, I WILL CERTAINLY CONSIDER THAT.

MS. RITZIE: WE CAN PUT THAT IN THE JUDGMENT. THANK YOU. ANYTHING FURTHER?

MS. LIPSEY: NO, YOUR HONOR.

THE HEARING IN THIS MATTER WAS CONCLUDED.

CERTIFICATE

I, CARMEL BURNS, OFFICIAL COURT REPORTER, NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA, DO HEREBY CERTIFY THAT THE FOREGOING PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPT OF THE CAPTIONED PROCEEDINGS, AS TAKEN BY ME ON THE STENOTYPE MACHINE, TO THE BEST OF MY KNOWLEDGE AND ABILITY.

WITNESS MY HAND, THE 28TH DAY OF DECEMBER, 1995.

s/ CARMEL M. BURNS, CCR #87178
OFFICIAL COURT REPORTER
NINETEENTH JUDICIAL DISTRICT COURT

APPENDIX F

Temporary Restraining Order

ANNETTE LASALLE NO 416, S77 DIV H
PLAINTIFF

19TH JUDICIAL DISTRICT COURT

vs.
WILLIAM HAWK DANIELS
DEFENDANT PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

TO: William Hawk Daniels, III
43 West Drive, Baton Rouge, La.

THE COURT HAS ORDERED an injunction that temporarily restrains you from:

> harassing Lassalle in any manner; from going near Lassalle's residence at 956 Bourbon Ave., Baton Rouge, Louisiana, or wherever Lassalle resides in East Baton Rouge Parish; from going near Lassalle's place of employment located at the Governmental Building, 222 St. Louis Street, Baton Rouge, Louisiana, or interfering in any manner with Lassalle's employment.

The Court's Order states why it was granted without prior notice to you, and without a hearing. If you do these things you are violating a Court Order and may be subject to penalties. This Temporary Restraining Order was made by the Clerk of Court on the 15th day of May, 1995.

Deputy Clerk of Court for
Doug Welborn Clerk of Court

ADDITIONAL INFORMATION

These documents mean you have been sued.

Legal assistance is advisable and you should contact a lawyer immediately.

If you want a lawyer and can't find one, you may call the Baton Rouge Lawyer Referral

Service at 344-9926. The Baton Rouge Lawyer Referral Service operates in conjunction with the Baton Rouge Bar Association.

If you qualify, you may be entitled to free legal assistance through the Legal Aid Society of Baton Rouge; you may call 387-5173 for more information.

JUDGES AND COURT PERSONNEL ARE NOT PERMITTED TO GIVE LEGAL ADVICE.

Deputy Sheriff, Parish of East Baton Rouge, La.

APPENDIX G

ANNETTE LASSALLE NO 416,877 DIV. H

19TH JUDICIAL DISTRICT

VERSUS

PARISH OF EAST BATON ROUGE

WILLIAM HAWK DANIELS STATE OF LOUISIANA

PETITION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION

NOW INTO COURT, through undersigned counsel, comes Annette

Lassalle ("Lassalle"), who represents as follows:

1.

Lassalle is a major domiciliary of the Parish of East Baton Rouge, State of Louisiana.

2.

Made defendant is William Hawk Daniels II ("Daniels"), a major domiciliary of the Parish of East Baton Rouge, State of Louisiana.

3.

Daniels has engaged in a pattern of willful, malicious, and harassing conduct directed at Lassalle, which conduct seriously alarms, annoys and distresses Lassalle, and which conduct serves no legitimate purpose. Additionally, this conduct causes Lassalle to be in fear of bodily injury.

4.

Lassalle works as a Family Court judge at the Governmental Building, 222 St. Louis Street, Baton Rouge, Louisiana.

5.

Harassing acts engaged in by Daniels include, but are not limited to, the following:

1. On January 19, 1995, Daniels appeared at the Governmental Building, acting in a boisterous and rowdy manner according to the investigating officer. Daniels made derogatory statements concerning Lassalle. Lassalle was advised of the incident;

2. On May 15, 1995, Lassalle was advised that Daniels was picketing the Governmental Building, carrying a sign stating as follows:

A. M. Lassalle Judge
False Accuser *Stalking*
Cocaine Abuser
Merchant of Chaos
Unmitigated Lying
Cocaine Whore!

City Police Officer Gary Fontenot brought Daniels into the courthouse whereupon Daniels told Officer Fontenot that Daniels did not care if he went to jail, that he had been there before, and that his mother had to put her house up to get him out of jail. Officer Fontenot told Daniels that a restraining order would be obtained against him. Daniels responded he would "be back tomorrow." In the presence of Officer Fontenot and Charlie Gouner, Daniels stated "that cocaine whore is gonna get it yet";

(3) Approximately at 1:00 p.m. on May 15, 1995, Daniels began making a series of harassing phone calls to secretaries employed by the Family Court and referred to Lassalle as a "slut."

6.

Lassalle has been apprised of the above incidents, which have seriously, alarmed, annoyed and distressed her.

7.

Lassalle is entitled to a temporary restraining order and a preliminary injunction pending a trial on the issue of a permanent injunction, because the actions described above, if such acts continue, will cause irreparable harm to Lassalle.

WHEREFORE, Lassalle prays that the Court issue a temporary restraining order prohibiting Daniels from harassing Lassalle in any manner whatsoever; prohibiting Daniels from going near the residence of Lassalle at 956 Bourbon Ave., Baton Rouge, Louisiana, or wherever petitioner resides in East Baton Rouge Parish; prohibiting Daniels from going near Lassalle's place of employment located at the Governmental Building, 222 St. Louis Street, Baton Rouge, Louisiana, or interfering in any manner with Lassalle's employment; and that Daniels be advised of the penalties for violating the temporary restraining order.

Additionally, Lassalle prays for a preliminary injunction ordering and prohibiting Daniels from harassing Lassalle in any manner whatsoever; prohibiting Daniels from going near the residence of Lassalle at 956 Bourbon Ave., Baton Rouge, Louisiana, or wherever petitioner resides in East Baton Rouge Parish; prohibiting Daniels from going near Lassalle's place of employment located at the 222 St . Louis with Lassalle's employment; and that Daniels be advised of the penalties for violating the temporary restraining order.

Finally, Lassalle prays that this Court enter an order permanently enjoining Daniels from harassing Lassalle in any manner whatsoever; prohibiting Daniels from going near the residence of Lassalle at 956 Bourbon Ave., Baton Rouge, Louisiana, or wherever petitioner resides in East Baton Rouge Parish; prohibiting Daniels from going near Lassalle's place of employment located at the Governmental Building, 222 St. Louis Street, Baton Rouge, Louisiana, or interfering in any

manner with Lassalle's employment; and that Daniels be advised of the penalties for violating the temporary restraining order.

By Attorneys:
BREAZEALE, SACHSE WILSON, L.L.P.
One American Place, 23rd Floor
P.O. Box 3197
Baton Rouge, LA 70821
(504) 387-4000
BY: s/Christine Lipse
Louisiana Bar Rouge No. 1182
Attorneys for Annette Lassalle

PLEASE SERVE:
William Hawk Daniels II
438 West Drive
Baton Rouge, Louisiana

or wherever service may be perfected

VERIFICATION

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

Annette Lassalle, verifies that she has read the foregoing petition, and the allegations contained therein are correct to the best of her knowledge, information, and belief.

s/ ANNETTE LASSALLE

Executed this 15th day of May, 1995, at Baton Rouge, Louisiana.

s/ CHRISTINE LIPSEY
NOTARY PUBLIC

APPENDIX H

ANNETTE LASSALLE NO. DIV.

19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

WILLIAM HAWK DANIELS STATE OF LOUISIANA

CERTIFICATE OF PETITIONER'S COUNSEL

NOW COMES Christine Lipsey, counsel for Annette Lassalle, who states that notice was given by Officer Gary Fontenot to William Hawk Daniels, II on May 15, 1995 that a restraining order would be obtained.

s/ CHRISTINE LIPSEY

Executed this 15th day of May, 1995, at Baton Rouge, Louisiana.

s/ Barbara S. Housh
NOTARY PUBLIC

Baton Rouge, Louisiana this 15th day of May, 1995, at the hour of 4:05 o'clock p.m. (1605)

s/ J. Michael McDonald
JUDGE, 19TH JUDICIAL DISTRICT COURT

Respectfully submitted:
By Attorneys,
BREAZEALE, SACHSE, & WILSON, L.L.P.
23rd Floor, One American Place
Post Office Box 3197
Baton Rouge, LA 70821-3197
Telephone: (504) 387-4000

s/ Christine Lipsey
Louisiana Bar Roll No. 1182
Attorneys for Annette Lassalle